



January 28, 2021

VIA ECF, EMAIL & FEDEX

Judge Robert D. Drain
United States Bankruptcy Court
Southern District of New York
300 Quarropas Street, Room 248
White Plains, NY 10601-4140
judge_drain@nysb.uscourts.gov

Re: *Bruce v. Citigroup, et al.*,
13-bk-22088 (RDD); 14-ap-8224 (RDD)

Dear Judge Drain:

We have just received Mr. Nagin's letter of today in regard to the issue raised in our letter of January 25, 2021.

We first note that the issue before the Court is not whether Citibank is complying with the stay order. As we acknowledged in our letter, the stay order technically applies only to sold accounts. Rather, we wrote the letter because Citibank is continuing to mark *unsold* discharged debts as charged off, as Mr. Nagin concedes in his letter. The adversary complaint in this proceeding covers both sold and unsold accounts. Dkt. 39 at ¶ 80.

Mr. Nagin seeks to excuse Citibank's marking of discharged debts as charged off on the basis that, prior to the bankruptcy, Citibank treated the account as closed. "Accordingly, there was no Citi debt to discharge, and thus no discharge for Citi to report." Nagin letter at 2.

This is wrong as a matter of law. Whether or not Citibank treats a debt as no longer due and owing or marks it "closed" does not mean that the debt is not within the scope of the bankruptcy, especially when the creditor continues to mark the debt as "charged off" or "past due." A debt that Citibank has closed but, nonetheless, marked as due is a "claim" within the meaning of the Bankruptcy Code 11 U.S.C. § 101(5)(A); *Midland Funding LLC v. Johnson*, 137 S. Ct. 1407, 1412 (2017); *Johnson v. Homestate Bank*, 501 U.S. 78, 83 (1991); *Lopez v. Wells Fargo Bank, N.A.*, 2020 WL 4778152, at *9-12 (E.D.N.Y., Aug. 14, 2020). Where a claim is discharged in bankruptcy the creditor must either mark it as included in bankruptcy or delete it. It cannot continue to mark it as charged off. Citibank expressly concedes that it is continuing to mark discharged debts as charged off.



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As this Court has said many times, a creditor cannot mark a debt as charged off and, at the same time, claim before this Court that there is no debt owing.

Finally, Mr. Nagin also seeks to excuse Citibank's conduct in *Alsibai* by claiming that the Citibank debt was not listed in the bankruptcy petition. But Citibank's conduct cannot be explained by that fact because we have evidence of another debtor who *did* list the Citibank debt on his Schedule F and who received a discharge in February, 2018. Citibank, as of *today*, is still recording the debt as "charged off."

Respectfully submitted,

/s/ George F. Carpinello

George F. Carpinello

GFC/slb

cc via ECF: Counsel of Record